

## **TITLE 329 SOLID WASTE MANAGEMENT BOARD**

### **INSPECTION AND CLEANING OF CONTAMINATED PROPERTIES (ILLEGAL DRUG LABORATORIES)**

LSA Document #05-182

March 21, 2006

This packet contains materials for the board meeting to consider preliminary adoption of new rules for inspection and cleaning of contaminated properties (illegal drug laboratories) in 329 IAC 17:

- Fact Sheet
- Summary/Response to Comments from the Second Comment Period
- Draft Rule Proposed for Preliminary Adoption
- Estimate of Economic Impact

**Office of Land Quality**

Rules, Planning and Outreach Section



## New Rules at 329 IAC 17 Concerning the Inspection and Cleaning of Properties Contaminated by Chemicals Used in the Illegal Manufacture of a Controlled Substance

LSA Document #05-182

### Overview

This rule adds requirements for cleaning up property that has been contaminated by chemicals used in the illegal manufacture of a controlled substance, and adds requirements for listing persons who are qualified to clean up those properties.

### Citations Affected

329 IAC 17.

### Affected Persons

Persons who own property that has been contaminated by chemicals used in the illegal manufacture of a controlled substance, and owners' agents. Persons who apply to be listed on the list of persons who are qualified to inspect and clean such property.

### Reasons for the Rule

This rule is required by IC 13-14-1-15 (Public Law 192-2005, SEA 444).

### Economic Impact of the Rule

The economic impact of this rule could be as high as \$2,530,000, balanced by revenues of contractors who decontaminate these properties and savings resulting from reduction in health risks.

### Benefits of the Rule

This rule will assure appropriate cleanup of properties contaminated by chemicals used in the illegal manufacture of a controlled substance, reduce health risks to persons who occupy those properties, and increase the value and marketability of surrounding properties.

### Description of the Rulemaking Project

This rule adds 329 IAC 17 to require persons who own property that has been contaminated by chemicals used in the illegal manufacture of a controlled substance to have that property decontaminated before reoccupying the property or transferring an interest in that property to another person, and to establish criteria and procedures for the Department of Environmental Management to use to maintain a list of persons who are qualified to inspect and clean contaminated properties.

### Scheduled Hearings

First Public Hearing: March 21, 2006

Second Public Hearing: Not yet scheduled

### Consideration of Factors in IC 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could be reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- 7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
  - (A) human, plant, animal, or aquatic life; or
  - (B) the reasonable enjoyment of life and property.

### Consistency with Federal Requirements

This rule is consistent with federal laws governing controlled substances.

### Rulemaking Process

The first step in the rulemaking process is a first notice published in the *Indiana Register*. This includes a discussion of issues and opens a first comment period. The second notice is then published which contains the comments and the departments responses from the first comment period, a notice of first public hearing, and the draft rule. The Solid Waste Management Board holds the first public hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second public hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public hearing is held and public comments are heard. Once final adoption occurs, the rule must be approved by the Indiana Attorney and the Governor. If approved, the rule becomes effective 30 days after filing with the Secretary of State.

## **TITLE 329 SOLID WASTE MANAGEMENT BOARD**

#05-182(SWMB)

### **SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD**

The Indiana Department of Environmental Management (IDEM) requested public comment from January 1, 2006 through January 31, 2006, on IDEM's draft rule language. IDEM received comments from the following parties:

Dwayne Caldwell, Vanderburgh County Health Department (VCHD)  
Matthew J. Griggs, ACT Environmental Services, Inc. (ACT)  
Aaron Trippler, American Industrial Hygiene Association (AIHA)  
Andy Pyle, Industrial Solutions Group, Inc. (ISG)  
Gregory G. Smith, Protechs, Inc. (PI)  
Jack E. Leonard, Environmental Management Institute, Inc. (EMI)  
Michael Morris, EHS Technology Group, LLC (EHS)

Following is a summary of the comments received and IDEM's responses thereto.

*Comment:* The commentor asked to be included in a work group to develop this rule. (VCHD) (ACT) (PI) (ISG) (EMI) (EHS)

*Response:* IDEM is including these commentors as part of the work group for this rule.

*Comment:* The commentor recommends that Indiana look at the Colorado regulations to see if there is additional language that could benefit the rule. Specifically, the interest of AIHA lies in the area of "certification for individuals involved in inspection, oversight, and cleanup of illegal labs". AIHA supports the language found in the Colorado law and regulations that requires a Certified Industrial Hygienist (CIH) to verify that the property owner has met the cleanup standards established by the proposed rules. The commentor is not opposed to persons other than Certified Industrial Hygienists becoming qualified. The commentor's concern is that individuals with no recognized training and education are beginning to represent themselves as qualified to oversee these cleanups. The commentor believes that using a CIH is the best means of ensuring the cleanup is done correctly. (AIHA) Individuals with a chemical exposure assessment or toxicology background must be involved with the project management when decontaminating properties or materials that have been directly exposed to hazardous materials used in the manufacturing of controlled substances addressed in the proposed rule. Certified Industrial Hygienists (CIHs) and Certified Hazardous Materials Managers (CHMMs) have the education, training and experience necessary to safely oversee not only the necessary training and sampling procedures, but are also capable of documenting and providing recommendations on proper and effective decontamination techniques used in the safe handling and removal of contaminated materials. The commentor strongly recommends that the following language, or similar language, be included in the rule:

#### **Rule 2. Definitions**

**Sec. 2. "Certified person" means a person, as defined in IC 13-11-2-158(a), who has been certified by the department under this rule as qualified to supervise**

decontamination of contaminated property and certify that the property meets the decontamination level specified in 329 IAC 17-4-6, Table 1. A person is certified to supervise decontamination of a contaminated property when the department places that person's name on the list of certified persons. Persons responsible for the supervision of sampling and final certification regarding decontamination will have either the Certified Industrial Hygienist (CIH) or Certified Hazardous Materials Manager (CHMM) credential. The CIH credential must be given by the American Board of Industrial Hygiene and the CHMM credential must be given by the Academy of Hazardous Materials Managers.

#### **Rule 4. Certified Person**

**Sec. 2. (f) Certified Supervisors/Companies involved with the sampling must keep the following credentials:**

- 1. Any sampling efforts will be supervised and reviewed by a certified Industrial Hygienist or Certified Hazardous Materials Manager.**

**Sec. 7. (c) The person who signs the certificate of [decontamination] shall maintain professional liability insurance in the amount of at least one million dollars (\$1,000,000) and Errors and Omissions insurance in the amount of at least one million dollars (\$1,000,000) per occurrence.**

**Sec. 7. (f) Companies associated with the labor associated with the decontamination of properties shall maintain pollution prevention insurance of approximately three million dollars (\$3,000,000). (ISG)**

The commentor has worked with many different CIHs with the conclusion that some do not have the expertise in the field that they are in. (PI)

*Response:* IDEM has reviewed information publicly available from the American Industrial Hygiene Association (AIHA) and the American Board of Industrial Hygiene (ABIH), the certifying body for certified industrial hygienists. This review indicates that while all certified industrial hygienists are highly skilled and well-experienced, not all have acquired the specialized knowledge and skills necessary to certify decontamination under this rule, nor have all practiced in this field. It is clear that a significant number of persons, who for a variety of reasons have not become certified, also possess the knowledge and experience needed to successfully fulfill the duties described in this rule. IDEM does not intend to intentionally give a single community a monopoly on this important work. The AIHA has established a specialty code, "Contamination Evaluations", that can be used by members to describe their areas of expertise in their listings with the association. Persons who hold other certifications, such as Certified Hazardous Materials Manager, may also have the necessary knowledge and experience and should not be excluded out of hand. IDEM's responsibility under IC 13-14-1-15 (Pub. L. 192-2005; SEA 444, Section 6) is to ensure that each certified inspector has the skills and experience needed to fulfill the duties described in this rule. IDEM believes that persons with the CIH, CHMM or other professional certifications will have a great advantage in becoming certified under this rule due to their high level of training and experience.

*Comment:* A third party qualified CIH should be hired to determine the level of hazard at a site. This third party has to have qualifications to determine the level of toxins in the site, be able to write a written protocol for all parties to comprehend, especially the

decontamination company to make sure areas that need to be decontaminated are done along with areas that do not need decontaminated are left alone. All parties need to understand that this is not an open checkbook. The level of contamination and the cleaning protocol used must be determined by a CIH. (PI)

*Response:* There is a wide variety of opinion on the relationship between the certified inspector and the cleanup contractor. IDEM does not have any information that shows that a certified inspector associated with the cleanup contractor will provide inferior services or exploit the relationship for profit to a greater degree than a certified inspector who is an independent third party. 329 IAC 17-3-1(d) prohibits an owner, certified or uncertified, from decontaminating property controlled by that person.

Nothing in this rule prohibits a certified industrial hygienist from becoming certified. Not all certified industrial hygienists have the specialized training or experience required by this rule. However, a certified industrial hygienist should have no problem becoming certified under this rule. It is beyond the scope of IC 13-14-1-15 and this rule to regulate pricing of decontamination services.

The services of the certified inspector are provided to the property owner. The property owner will receive certification of the post-decontamination testing and will have access to full documentation of the testing. As provided in 329 IAC 17-4-6, nothing in this rule prevents review and validation of the documentation and supporting data by an independent third party retained by the owner or a prospective purchaser or renter.

*Comment:* The CIH must have substantial Errors and Omissions Insurance to justify their existence, their dedication to their industry. (PI)

*Response:* IDEM agrees and will add appropriate provisions to the draft rule. IDEM specifically requests information on the appropriate amount of such insurance to require. However, IDEM also believes that there are sufficient marketplace controls on this industry in place now and that it is not necessary to go to great lengths in this rule to provide detailed quality control standards for this industry.

*Comment:* The hauler of illegal controlled substances must be a third party firm reporting directly to a government agency or jurisdiction. They should have no affiliation with the CIH or decontamination company to prevent conflict of interest. It is pretty difficult to police a company's exposure level when you are doing multiple trades of a project. (PI)

*Response:* IDEM has not been tasked with, nor has it accepted, responsibility for directly supervising decontamination of contaminated properties under this rule. The need for such supervision has not been demonstrated. Waste haulers are currently well-regulated and further regulation is unnecessary.

It should be noted that this rule places the burden of proper decontamination on the property owner. Failure to properly decontaminate the property will result in significant impairment of the owner's ability to reuse or market the property and will expose the owner to increased liability.

*Comment:* The decontamination company must have at least a forty (40) hour HAZWOPER course. This is a must for all employees, subcontractors, etc. If a person enters the site, they must have the certification. We also feel that each person have a minimum of an eight (8) hour refresher course on an annual basis that is signed off by a third party administrator. (PI)

*Response:* 329 IAC 17-4-1 and 329 IAC 17-4-2 require certified inspectors and all persons who decontaminate contaminated properties to have training that meets the requirements of

29 CFR 1910.120(e)(Hazardous Waste Operations and Emergency Response).

*Comment:* The decontamination company must have a minimum of two million dollars (\$2,000,000) contractor's pollution coverage. (PI)

*Response:* IDEM agrees and will add appropriate provisions to the draft rule. IDEM specifically requests information on the appropriate amount of such insurance to require. However, IDEM also believes that there are sufficient marketplace controls on this industry in place now and that it is not necessary to go to great lengths in this rule to provide detailed quality control standards for this industry.

*Comment:* The rule must require established pricing, either by sample, by pound of waste material hauled, or by square footage or cubic footage as guidelines so pricing will be comparative, not all over the board. This practice is used in other restoration projects in the industry. (PI)

*Response:* Regulation of pricing is beyond the scope of IC 13-14-1-15 and this rulemaking.

*Comment:* The agency that has jurisdiction over the contaminated site must have complete control over the property and should release the property to the owner or agent of the owner when a post-decontamination assessment is completed by a qualified CIH and all parties affiliated with the project have been paid. (PI)

*Response:* Under Indiana law, the authority to prohibit occupancy of a contaminated property rests with the local health department (IC 16-41-20, IC 16-19-3-11, IC 16-20-1-19, IC 16-41-20-9). The local health department will allow the property to be reoccupied when the contamination at the property has been abated. This rule is intended to provide a mechanism for the owner to use to provide documentation that the contamination has been removed.

*Comment:* Who is going to pay for the services and how will these payments be made? (PI)

*Response:* The owner of the contaminated property is responsible for payment. Regulation of fees and payment methods for these activities is beyond the scope of IC 13-14-1-15 and this rulemaking.

*Comment:* Does 329 IAC 17-1-1(1) include properties owned or controlled by state, federal or local government entities? (EMI)

*Response:* Yes. However, IDEM will insert provisions to protect counties that come into possession of contaminated properties from liability under this article.

*Comment:* 329 IAC 17-2-7 excludes both law enforcement and hazardous materials responders. This section should also exclude hazardous materials responders. (EMI)

*Response:* This definition is not an exclusion. It is intended to separate the activities performed by law enforcement agencies and their agents under their statutory authorities from the decontamination activities intended to be regulated under IC 13-14-1-15 (SEA 444, Section 6). Under current practice, contractors remove the materials and equipment used to manufacture illegal drugs under contract to the law enforcement agency that seizes the laboratory as an agent of the law enforcement agency. The person who decontaminates the property under this rule will do so under contract to the property owner or the owner's agent.

*Comment:* Since the property disclosure in 329 IAC 17-3-1(b) may not occur until years

after the cleanup, this creates a separate recordkeeping requirement for the owner that is not made explicit in the rule. According to [329 IAC] 17-4-7(d), the certified inspector must retain the record for only five (5) years. (EMI)

*Response:* There is no requirement for the owner to retain the certificate of decontamination for any specified period of time. The certificate of decontamination is the evidence the owner will use to assure a prospective buyer or renter that the property has been properly decontaminated. It is in the owner's financial interest to keep this evidence as long as necessary to secure the owner's interest in the property.

*Comment:* Under 329 IAC 17-4-1(b)(2), how will IDEM verify that such information was included in the [29 CFR] 1910.120(e) training course? Can the employer provide and certify the training of such persons? 29 CFR 1910.120(e) specifies several types of training. It would be helpful to list this as 29 CFR [1910.120](e)(3) training. (EMI)

*Response:* One of the goals of this rulemaking project is to use existing capabilities as much as possible, including training providers that currently provide training to cleanup contractors. IDEM intends to accomplish the purpose of this rule with the least cost to regulated entities, as required by Indiana law. Each applicant will be required to document the required training in his or her application. IDEM will review the application to verify the applicant has received this training.

Regulating the delivery of training under 29 CFR 1910.120(e) is beyond the scope of this rulemaking and IDEM's statutory authority. It is the employer's responsibility to determine how to provide the required training to employees and others who work at a particular site for which that employer is responsible. It is the responsibility of the employer and the training provider to ensure that workers and supervisors receive the appropriate training. IDEM will coordinate with the Indiana Occupational Safety and Health Division (IOSHA) if review of these applications indicates that training providers or employers are failing to provide the training required by 29 CFR 1910.120(e).

29 CFR 1910.120(e)(3) provides for training of general site workers and other site workers. However, 29 CFR 1910.120(e)(1) and (2) contain important requirements for all training that must be followed, such as the requirement to train all workers and the subject matter that must be included in the training. Citing to 29 CFR 1910.120(e) covers all requirements.

*Comment:* In 329 IAC 17-4-2(b), how is "equivalent qualifications" defined? Is actual prior experience in meth lab cleanup required or can other abatement certification (asbestos or lead supervisor) qualify? (EMI)

*Response:* IDEM will amend this provision to allow a broader range of experience during the first year of the rule.

*Comment:* In 329 IAC 17-4-2(c), the correct citation for supervisor requirements is 29 CFR 1910.120(e)(4). (EMI)

*Response:* 29 CFR 1910.120(e)(4) provides for training of managers and supervisors. However, 29 CFR 1910.120(e)(1) and (2) contain important requirements for all training that must be followed, including the requirements to provide training and the elements that must be covered in the training. Citing only to 29 CFR 1910.120(e)(4) would ignore these important general requirements. Citing to 29 CFR 1910.120(e) covers all requirements.

*Comment:* 329 IAC 17-4-2(c)(1) requires "Training on decontamination and inspection of contaminated property provided by the department." How long is this training course?

What is the detailed content of the training course? Is it a review and explanation of the cleanup guidance or is additional content included? Why does the department provide it? The commentor does not know of any other area of work where the department trains persons other than its own employees. If a person fails the exam which the department writes, is the department liable? If a department trainer trains narrowly to the exam, rather than to the full range of controlled substance cleanup, is that adequate training? Why can it be provided only by the department? (EMI)

*Response:* This course will be developed by IDEM in consultation with the Indiana State Department of Health, the Indiana State Police and other health and safety agencies. Constructive comment and advice from qualified training providers is welcome and will be of great value as this course is developed. However, IDEM does not want to delay this important rule for an extended period of time while the optimum course is developed.

*Comment:* 329 IAC 17-4-2(c)(2) states that the examination must be passed “with a score of at least eighty percent.” Why not the seventy percent used in all other areas of department certification? (EMI)

*Response:* Scoring of a test is interrelated with the content, form and purpose of the test. The course content and the test have not yet been developed. IDEM is open to discussing the actual passing score in the overall context of the examination.

*Comment:* In 329 IAC 17-4-2(c)(2), how much grace period is allowed? (EMI)

*Response:* IDEM intends to provide biennial refresher training. Certified inspectors will have to attend that refresher training when it is offered. Certified inspectors who fail to take the refresher training will be removed from the list because they will lack the updated knowledge required to safely and effectively perform these services. IDEM will make every effort to provide the refresher training at reasonably available times and places.

*Comment:* If the department training and examination in 329 IAC 17-4-3 is the gateway [to certification], why is a separate application process involved? Why aren’t applicants issued certification as a consequence of successful completion [of the training] instead of requiring a subsequent step? (EMI)

*Response:* IC 13-14-1-15 requires IDEM to determine which persons are qualified to inspect and clean contaminated properties. This rule specifies three criteria: 40 hours of experience decontaminating properties contaminated by illegal manufacture of controlled substances, the training required by 29 CFR 1910.120(e), and successful completion of IDEM-provided training in decontamination of structures that contained drug labs evidenced by a passing score on an examination. These requirements are the minimum to ensure proper and safe decontamination, and each must be separately documented and verified by IDEM to ensure property owners and their agents that the persons listed by IDEM are in fact qualified. This is a basic requirement of IC 13-14-1-15.

The IDEM-supplied training is not the gateway to certification. It is only intended to ensure that all certified inspectors have the information necessary to safely and properly carry out these duties. Simply handing out certifications to persons who attend the training course would not ensure that those persons are in fact qualified and would not meet the intent of the statute.

*Comment:* 329 IAC 17-4-4: Is there an opt-out from electronic publishing for persons who do not wish to advertise their services? (EMI)

*Response:* IC 13-14-1-15 requires IDEM to maintain a list of all persons who are certified



to inspect and clean contaminated properties. The purpose of the list is to allow owners and their agents to identify and locate certified inspectors and to verify the certification of a prospective contractor. A certified inspector who does not wish to advertise could still inspect and clean contaminated properties, and must remain on the list to allow the owner or his agent to verify that inspector's certification. The provision in 329 IAC 17-4-4(c) requiring a certified inspector to specify how that person should be listed is not intended to provide free advertising space but to allow owners and their agents to accurately identify certified inspectors and easily get in touch with them.

*Comment:* IC 13-14-9-4 NIFL: The regulations need a provision for state, county or municipal acquisition of abandoned property. (EHS)

*Response:* IDEM agrees and will add provisions to protect the interests of units of government that acquire or transfer these properties.

*Comment:* How will this draft rule interact with House Bill 798, "Methamphetamine Remediation Research Act of 2005"? (EHS)

*Response:* H.B. 798 has not yet been signed into law, and its future is not certain. When it becomes law, IDEM will examine the resulting statute and consider any appropriate changes to this rule that may be required. A major provision of H.B. 798 is to task the U.S. Environmental Protection Agency with studying the health effects of exposure to methamphetamine on adults and children. If H.B. 798 passes, IDEM hopes such studies will be completed in a timely manner and yield solid information that can be used to set health-based decontamination levels that can be adopted in a future amendment to the rule.

*Comment:* Regarding 329 IAC 17-2-8, manufacturing defined, the manufacturing process involves multiple steps and storage of raw materials at multiple locations. If just storage of raw materials occurred at a site, or if only disposal of wastes occurred at another site, would each site be treated as an "identified" site? What criteria will be used to determine an identified site? (EHS)

*Response:* Only terms used in this rule are defined, and creation of new terms not used in the rule may confuse users of the rule. The rule defines a "contaminated property" as a property that has been identified by a law enforcement agency as having been used for illegal manufacture of controlled substances and is reasonably expected to be contaminated. The identification of these properties as having been used for illegal manufacture of controlled substances is the responsibility of the law enforcement community using criteria established in federal and state law. This rule does not use the term "identified site".

*Comment:* Under 329 IAC 17-3-1(a)(1), will the owner be required to secure the site and put up signage until the property is decontaminated? (EHS)

*Response:* Under Indiana law, the authority to prohibit occupancy of a contaminated property rests with the local health department (IC 16-41-20, IC 16-19-3-11, IC 16-20-1-19, IC 16-41-20-9). A local health departments typically placards a building when it is identified and removes the placards when notified that the property has been decontaminated. This is preferable to relying on the owner to secure the site.

*Comment:* Under 329 IAC 17-3-1(d), will the owner have any responsibility to warn or protect the demolition crew? (EHS)

*Response:* The issue of demolition was discussed during the Midwest Governor's Conference Regional Methamphetamine Summit in December, 2005. It was the consensus

of the cleanup protocol work group that a building used for illegal drug manufacture could be demolished safely without decontamination. IDEM welcomes additional data or experience that would confirm this or show significant hazards to demolition workers. It is the responsibility of the employer to recognize hazards in the workplace and to train and equip workers to protect them from those hazards. Reiteration of these worker safety provisions is beyond the scope of this rule.

*Comment:* In 329 IAC 17-3-1(e), disposal of a vehicle could have interpretations other than destroying the vehicle. (EHS)

*Response:* IC 9-22 governs disposition of abandoned, salvaged and scrap vehicles. A vehicle that is reused or disposed of in a way other than provided for in IC 9-22 would have to be decontaminated under this article.

*Comment:* In 329 IAC 17-3-2(a), is an uncertified owner allowed to decontaminate or supervise decontamination of his or her own property? (EHS)

*Response:* No. 329 IAC 17-3-1(d) prohibits an owner, certified or uncertified, from cleaning his or her own property. 329 IAC 17-3-2 prohibits a person who is not a certified inspector from supervising decontamination, inspecting contaminated property, or issuing a certificate of decontamination.

*Comment:* In 329 IAC 17-4-1(b)(2), HAZWOPER certification must include the training plus the first three days of on-the-job training plus yearly refresher training. (EHS)

*Response:* It is the responsibility of the employer and the training provider to ensure that all workers fully comply with the provisions of 29 CFR 1910.120(e). Completion of all required training must be documented in the application for certification. Reiteration of these worker safety provisions is beyond the scope of this rule.

*Comment:* 329 IAC 17-4-2(b): Does cleanup at non-drug hazardous waste sites count as the required experience? (EHS)

*Response:* No. 329 IAC 17-4-2(b) requires “at least forty (40) hours of experience decontaminating contaminated properties.” The intent of the training and experience requirements is to equip the certified inspector with the specialized knowledge of hazards, standards and techniques unique to decontamination of former drug labs. This specific knowledge cannot be obtained on other sites that do not present the unique characteristics of these sites.

IDEM will add a provision to expand the scope of the required experience during the first year of this rule to allow qualified persons to obtain initial certification when no certified inspector is available to provide the required experience.

*Comment:* In 329 IAC 17-4-6(a)(1), why does the rule incorporate the Alaska sampling guideline? Indiana should develop its own protocol. (EHS)

*Response:* IDEM examined sampling and cleanup protocols from Alaska, Arizona, Arkansas, Colorado, Illinois, Minnesota, Missouri, North Carolina, Oklahoma, Oregon, South Dakota, Tennessee, Washington, Wisconsin and Wyoming. These protocols varied widely in completeness and usability. The Alaska sampling protocol was selected as the most comprehensive, most complete and easiest to use. No Indiana entity has offered to develop such a protocol. IDEM does not want to delay this rule for a significant period of time to develop a new protocol from scratch. When a better sampling procedure or protocol is available, IDEM will consider amending the rule to adopt it.

*Comment:* Regarding 329 IAC 17-4-6(a)(1), soil and ground water must be considered before clearing a property. A common practice for the disposal of wastes, especially in rural or non-residential areas, is to dump the wastes on the ground. This often occurs just outside of a door or window where new occupants are likely to walk or play. You have addressed septic systems needing to be checked, but hazardous and toxic chemicals and drugs do not vanish when they run out into the leach field. The rule should include a requirement for a trained hydrogeologist to become involved in these cases. (EHS)

*Response:* At this point, IDEM is working to balance the thoroughness of the decontamination with the cost and difficulty of the work. Requiring an owner to hire an additional professional in all cases has not yet been shown to be necessary. IDEM has not obtained information that quantifies the risks to health from chemicals used in the illegal manufacture of controlled substances found in a septic system leach field after the septic system has been pumped out. IDEM specifically requests additional information and data on this issue.

329 IAC 17-4-5(4) requires the certified inspector to “notify the person who pumps out the septic system that the property was used for illegal manufacture of a controlled substance, including a warning about the hazards that may be expected when cleaning the septic system”. The soil immediately outside a residence should be included in the assessment conducted by the certified inspector.

The rule requires the owner to decontaminate the property. If the contamination is distributed outside of the structure, it is the responsibility of the certified inspector to identify that contamination and ensure its removal.

*Comment:* 329 IAC 17-4-6(a)(2): What if other drugs are present? What decontamination levels are to be used? Who will determine those levels? Who will be required to pay for a risk-based analysis if it is needed? There are few laboratories available to perform these analyses. (EHS)

*Response:* At the request of the methamphetamine task force, IDEM is adding phencyclidine (PCP) and gamma hydroxybutyrate (GHB) to the list of controlled substances under this rule.

329 IAC 17-4-6(a)(2), Table 1, lists the required decontamination levels for each of the chemicals controlled under this rule. At the time this rule was developed, no health-based levels were available for any of these chemicals. The best information available to date indicates that a very low level of remaining contamination, expressed in the draft rule as  $0.1 \mu\text{g}/100 \text{ cm}^2$ , is the best indicator of a thorough decontamination. When health-based data is available for safe exposure levels of adults and children to these chemicals, IDEM will revisit this rule and adjust these decontamination levels appropriately. IDEM is substituting  $1.0 \mu\text{g}/\text{ft}^2$  as the decontamination level for all chemicals in Table 1.  $1.0 \mu\text{g}/\text{ft}^2$  is roughly equivalent to  $0.1 \mu\text{g}/100 \text{ cm}^2$ , and will hopefully result in more accurate sampling by using a larger sampling area.

The property owner is responsible to bear all costs to return the property to reuse or marketability under this article. IDEM routinely works with laboratories that use SW-846 method 8270C. Some laboratories may use special extraction procedures to facilitate these analyses. IDEM is specifically interested in comment from laboratories on the best methods to sample, extract and analyze for these chemicals.

*Comment:* 329 IAC 17-4-7(d): What will be required if the company is going out of business and the records are less than five years old? (EHS)

*Response:* The primary intent of this record retention requirement is to allow IDEM to

verify the quality of the certified inspector's work to determine if IDEM should continue to list that person, and also serve to protect the certified inspector if complaints about that person's work are received. The certified inspector is required to provide the owner with the certificate of decontamination and make available to the owner the laboratory reports that support the information on the certificate.

Because it is in the owner's financial interest to maintain these records as long as the owner has an interest in the property, IDEM does not feel it is necessary to specify a record retention requirement for owners. If the property is abandoned and the county takes possession of the property, and the certificate of decontamination cannot be obtained from the certified inspector or the previous owner, the county or the subsequent purchaser can obtain a copy of the certificate from the local health department as provided in 329 IAC 17-4-7(c).

IDEM also received comments from the following parties after the end of the formal comment period:

Lynne Sullivan, Executive Director, Indiana Apartment Association (IAA)  
Ronald Lucy, EES Group, Inc. (EES)

While not required under IC 13-14-9-6(2), IDEM feels that these comments and IDEM's responses thereto are relevant and helpful to this rulemaking:

*Comment:* The manufacture of illicit methamphetamine (meth) in makeshift, clandestine laboratories is a growing concern throughout Indiana and the United States. There is a widespread understanding in the multifamily industry that an identified illegal drug laboratory must be reported to the appropriate law enforcement authorities. However, the residual health effects and safe decontamination levels of meth-related chemicals are largely unknown, which means these standards are not directly related to scientific or medical findings. (IAA)

*Response:* The commentor is correct to note that the decontamination levels in 329 IAC 17-4-6 are not health-based, because no health-based information on decontamination levels for methamphetamine or other illegally manufactured controlled substances is currently available. However, all available information indicates that exposure to methamphetamine and other illegal controlled substances is very harmful to humans, and especially to children, infants and the unborn. That is why those substances are illegal. The intent of this rule is to set a decontamination standard in the least restrictive manner by specifying a safe, achievable decontamination level and allowing the owner, in consultation with a certified inspector, to use the most advantageous decontamination method available with proper decontamination demonstrated by verifiable post-decontamination testing. The decontamination levels proposed are levels that represent the lowest risk to occupants of a former clandestine laboratory. These levels are used in Alaska, Arizona, South Dakota, Tennessee and Washington. Arkansas and Colorado use 0.5 µg/ft<sup>2</sup> for methamphetamine and Minnesota uses 1 µg/ft<sup>2</sup>. IDEM is amending the rule to substitute 1.0 µg/ft<sup>2</sup> for 0.1 µg/100 cm<sup>2</sup>. IDEM welcomes risk- and health-based studies or other information that will help to scientifically establish appropriate decontamination levels. When such information is available, IDEM will revisit this rule to establish health-based decontamination levels.

A discussion of the rationale for these decontamination levels may be found in "Guidelines for Environmental Sampling at Illegal Drug Manufacturing Sites," Appendix A, "Rationale for the Establishment of the Washington State Department of Health's Clandestine Drug Lab

Decontamination Standards,” Washington State Department of Health, November 30, 2005.

*Comment:* The rule is so broad that, under 329 IAC 17-2-3, any substance used in the manufacture of any controlled substance is considered a contaminant. (IAA)

*Response:* 329 IAC 17-2-3 includes illegally manufactured controlled substances, immediate precursors as defined in IC 35-48-1-17, chemical reagents and precursors defined in IC 35-48-4-14.5, and other substances used in or resulting from the illegal manufacture of controlled substances. IDEM is amending the rule to remove lead and mercury from the list of contaminants for which post-decontamination testing is required because the method that produces those contaminants is no longer used in Indiana. IDEM is also removing volatile organic compounds and corrosives because these substances can be found in structures without the presence of illegal drugs. In any case, the controlling factor in this definition is “used in or resulting from the illegal manufacture of controlled substances”. This rule will not apply to a substance found in a structure that has not been identified as having been used for the illegal manufacture of controlled substances.

*Comment:* 329 IAC 17-2-4 provides that property where any controlled substance has been manufactured is “contaminated”, without regard to any actual contamination that may or may not exist. In order to cease being “contaminated”, a certificate of contamination must be issued. Such a certificate is issued only after decontamination processes are completed (see 329 IAC 17-4-5), meaning that even a property where there is no actual contamination exists must be decontaminated before it can be occupied again. (IAA)

*Response:* In 329 IAC 17-2-4, a property is contaminated if it “has been identified by a state or local law enforcement agency as having been used for the illegal manufacture of a controlled substance and is reasonably expected to be contaminated with chemicals used in the illegal manufacture of a controlled substance.” The most common controlled substance that is illegally manufactured is methamphetamine. The processes used today in clandestine drug laboratories necessarily results in some level of contamination, so it is reasonable to expect such a property to be contaminated. Controlled tests have shown high levels of methamphetamine contamination after only one manufacturing operation.

IDEM is considering modifying the requirement to have a property decontaminated to allow testing and certification without decontamination. However, this may increase testing costs to property owners where such testing shows that the property is in fact contaminated and must be decontaminated.

*Comment:* Under 329 IAC 17-3-1, an owner is prohibited from decontaminating property owned by that owner. Even a sophisticated owner, such as an apartment owner, cannot, through employees, perform any of the process of decontamination, including when the process merely involves removal and replacement of flooring or drywall. (IAA)

*Response:* The Indiana General Assembly, in IC 13-14-1-15, tasked IDEM with developing a pool of qualified “persons with particular expertise or experience in the inspection or cleanup of property contaminated by chemicals used in the illegal manufacture of a controlled substance (as defined in IC 35-48-1-9) or by waste produced from the illegal manufacture of a controlled substance”. The criteria in 329 IAC 17-4-2 are the minimum criteria to be able to safely and effectively decontaminate a property in compliance with Indiana law. Few property owners will have employees who meet these criteria. The prohibition against owner cleanup is intended to ensure that contaminated properties are properly cleaned and to avoid conflicts of interest.

*Comment:* Restitution for cleanup and other costs should be shouldered by the perpetrator and be imposed in the course of related criminal proceedings. Restitution and state and local cleanup monies should be available to private property owners. (IAA)

*Response:* Restitution is beyond the scope of this rulemaking.

*Comment:* Owner immunity should be available to provide a future liability waiver for civil claims brought against a property owner arising after an effective cleanup. (IAA)

*Response:* Property owner liability is beyond the scope of this rulemaking.

*Comment:* Regarding 329 IAC 17-4-2, Criteria for Certification, the commentor recommends that an exception be made for a Certified Industrial Hygienist (CIH) to be automatically considered a Certified Person. A CIH has the professional qualifications in place for this type of work and should not be required to take the training. This may save a cost element to some of the interested firms who have a CIH on staff. (EES)

*Response:* Nothing in this rule prohibits a certified industrial hygienist from becoming certified. Not all certified industrial hygienists have the specialized training or experience required by this rule. However, a qualified certified industrial hygienist should have no problem becoming certified under this rule.

*Comment:* Regarding 329 IAC 17-4-4, Duties of Certified Person, the commentor recommends adding language to ensure that decontamination is performed in appropriate levels of personal protective equipment.

*Response:* The use and selection of personal protective equipment are a fundamental part of the training required by 29 CFR 1910.120(e) and are part of the duties required of employers at hazardous materials cleanup operations.

*Comment:* In 329 IAC 17-4-5(7), since the certified person will not be performing the actual disposal, the commentor suggests adding language that reads, "Verify that wastes resulting from decontamination are properly disposed at a permitted facility". The way it is worded could open up some liability issues that some firms may not want to take on. (EES)

*Response:* IDEM cannot waive the requirements in 329 IAC 3.1, 327 IAC 7.1, and 329 IAC 10 to properly dispose of wastes. Proper waste disposal is an inherent part of all cleanup activities. The decontamination contractor avoids liability by complying with those requirements. Proper disposal of wastes should be made part of a contract to decontaminate a property. IDEM will include training on proper waste disposal in the training to be provided to certified inspectors.

*Comment:* In 329 IAC 17-4-6, Table1, the requirements for analytical confirmation of volatile organic compounds (VOCs) are not necessary for air. Based on experience, VOCs are long gone by the time the decontamination occurs. The commentor feels that this level could be accomplished with the use of a portable real time instrument such as a PID or FID which of course would be properly calibrated with documentation submitted with the report. The use of analytical methods for VOCs would tend to drive up the cost of the project to the property owner. In 329 IAC 17-4-6, Table1, the test for corrosives on surfaces can be easily accomplished with the use of pH paper. Laboratory analysis would drive up the cost of the decontamination. In the commentor's experience, there are very few areas left that would have corrosives determination.(EES)

*Response:* IDEM is amending the rule to remove lead and mercury from the list of contaminants for which post-decontamination testing is required because the method that

produces those contaminants is no longer used in Indiana. IDEM is also removing volatile organic compounds and corrosives because these substances can be found in structures without the presence of illegal drugs.

# **TITLE 329 SOLID WASTE MANAGEMENT BOARD**

## **Draft Rule Proposed for Preliminary Adoption** LSA Document #05-182

Adds 329 IAC 17 concerning the inspection and cleanup of properties contaminated by chemicals used in the illegal manufacture of a controlled substance in accordance with IC 13-14-1-15. Effective 30 days after filing with the secretary of state.

### **HISTORY**

First Notice of Comment Period: August 1, 2005, Indiana Register (28 IR 3359).

Second Notice of Comment Period and Notice of First Hearing: January 1, 2006, Indiana Register (29 IR 1396).

### **329 IAC 17**

SECTION 1: 329 IAC 17 IS ADDED TO READ AS FOLLOWS:

#### **Article 17. Inspection and Remediation of Contaminated Property**

##### **Rule 1. General**

##### **329 IAC 17-1-1 Applicability**

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4.

Affected: IC 13-14-1-15

**Sec. 1. This article applies to the following:**

- (1) The owner of a contaminated property as defined in 329 IAC 17-2-8.**
- (2) A person who applies to be listed by the department as qualified to inspect and clean contaminated property.**
- (3) A person who decontaminates contaminated property under this article.**
- (4) A county that transfers a contaminated property in accordance with IC 6-1.1-25-4.1**

*(Solid Waste Management Board; 329 IAC 17-1-1)*

##### **Rule 2. Definitions**

##### **329 IAC 17-2-1 Applicability**

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4.

Affected: IC 13-11-2

**Sec. 1. The definitions in IC 13-11-2 apply throughout this article. In addition, the definitions in this rule apply throughout this article.** *(Solid Waste Management Board; 329 IAC 17-2-1)*

**329 IAC 17-2-2 “Chemicals used in the illegal manufacture of a controlled substance” defined**



Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4.  
Affected: IC 35-48-1-17; IC 35-48-4-14.5

**Sec. 2. “Chemicals used in the illegal manufacture of a controlled substance” means all substances used in or resulting from the illegal manufacture of controlled substances. The term includes the following:**

- (1) Illegally manufactured controlled substances.**
- (2) Immediate precursors as defined in IC 35-48-1-17.**
- (3) Chemical reagents and precursors as defined in IC 35-48-4-14.5.**
- (4) Other substances used in or resulting from the illegal manufacture of controlled substances.**

*(Solid Waste Management Board; 329 IAC 17-2-2)*

**329 IAC 17-2-3 “Contaminated property” defined**

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4.  
Affected: IC 13-14-1-15

**Sec. 3. (a) “Contaminated property” means**

- (1) real property; or**
- (2) a vehicle;**

**that has been identified by a state or local law enforcement agency as having been used for the illegal manufacture of a controlled substance and is reasonably expected to be contaminated with chemicals used in the illegal manufacture of a controlled substance.**

**(b) A property is no longer a contaminated property when the certificate of decontamination is issued.** *(Solid Waste Management Board; 329 IAC 17-2-3)*

**329 IAC 17-2-4 “Decontaminate” or “decontamination” defined**

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4  
Affected: IC 13-14-1-15

**Sec. 4. “Decontaminate” or “decontamination” means all activities related to assessment and removal of chemicals used in the illegal manufacture of a controlled substance from a contaminated property that occur after the operation used for illegal manufacture of a controlled substance has been dismantled by a law enforcement agency or its agents.** *(Solid Waste Management Board; 329 IAC 17-2-4)*

**329 IAC 17-2-5 “Illegally manufactured controlled substance” defined**

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4.  
Affected: IC 35-48-1-9

**Sec. 5. “Illegally manufactured controlled substance” means a controlled substance, as defined in IC 35-48-1-9, that has been illegally manufactured.** *(Solid Waste Management Board; 329 IAC 17-2-5)*

**329 IAC 17-2-6 “Inspect” or “inspection” defined**

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4  
Affected: IC 13-14-1-15

**Sec. 6. “Inspect” or “inspection” means all activities described in 329 IAC 17-4-6. The term does not include activities of any of the following:**

- (1) State and local law enforcement agencies.**
- (2) Hazardous materials responders.**
- (3) Local health departments.**
- (4) County health departments.**
- (5) City health departments.**

*(Solid Waste Management Board; 329 IAC 17-2-6)*

**329 IAC 17-2-7 “Manufacture” defined**

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4

Affected: IC 35-48-1-18

**Sec. 7. “Manufacture” has the meaning set forth in IC 35-48-1-18.** *(Solid Waste Management Board; 329 IAC 17-2-7)*

**329 IAC 17-2-8 “Owner of the contaminated property” defined**

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4

Affected: IC 35-48-1-18

**Sec. 8. “Owner of the contaminated property” means:**

- (1) a person having an ownership interest in the contaminated property; or**
- (2) an agent of a person having an ownership interest in the contaminated property.**

*(Solid Waste Management Board; 329 IAC 17-2-8)*

**329 IAC 17-2-9 “Qualified inspector” defined**

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4

Affected: IC 13-11-2-158

**Sec. 9. “Qualified inspector” means a person, as defined in IC 13-11-2-158(a), who has been placed on the qualified inspector list.** *(Solid Waste Management Board; 329 IAC 17-2-9)*

**329 IAC 17-2-10 “Qualified inspector list” defined**

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4

Affected: IC 13-11-2-158

**Sec. 10. “Qualified inspector list” means the list of persons meeting the requirements of this article to carry out the duties described in 329 IAC 17-4-5.** *(Solid Waste Management Board; 329 IAC 17-2-10)*

**Rule 3. Decontamination of Contaminated Property**

**329 IAC 17-3-1 Decontamination by qualified inspector required**

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4

Affected: IC 6-1.1-25-4.1; IC 9-22; IC 13-14-8-8; IC 16-19-3; IC 16-20-1; IC 16-41-20

**Sec. 1. (a) This section applies to the following:**

**(1) Contaminated properties that are:**

**(A) residences;**

**(B) hotels or motels; or**

**(C) businesses.**

**(2) Vehicles.**

**(b) This section does not apply to any of the following:**

**(1) Outbuildings that are not occupied.**

**(2) Storage units or buildings used for storage.**

**(3) Waste collection containers.**

**(4) Open land where no structure is contaminated.**

**(c) The owner of the contaminated property shall obtain a certificate of decontamination under 329 IAC 17-4-7 before:**

**(1) continuing to occupy or use the property;**

**(2) reoccupying or reusing the property;**

**(3) allowing the property to be reoccupied or reused; or**

**(4) transferring any interest in the property to another person;**

**except as provided in subsections (d) through (g).**

**(d) If the initial assessment of the property shows that contamination may exceed the final decontamination levels listed in 329 IAC 17-4-6, Table 1, then the property must be decontaminated to meet the final decontamination levels listed in Table 1.**

**(e) Nothing in this rule restricts the authority of a county to transfer a contaminated property in accordance with IC 6-1.1-25-4.1. The county shall notify the person who receives the tax deed to the property that the property is a contaminated property. The person who receives the tax deed to a contaminated property under IC 6-1.1-25-4.1 must comply with this section.**

**(f) A contaminated property that is a structure may be demolished and disposed of in accordance with 329 IAC 10 without complying with subsections (c) and (d).**

**(g) A vehicle may be disposed of under IC 9-22 without complying with this rule.**  
*(Solid Waste Management Board; 329 IAC 17-3-1)*

**329 IAC 17-3-2 Disclosure by owner of the contaminated property**

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4

Affected: IC 13-14-1-15

**Sec. 2. The owner of the contaminated property shall not transfer any interest in that property to another person until the owner of the contaminated property has done all of the following:**

**(1) Disclosed in writing to each of the other parties to the transfer of property the existence on that property of an operation that:**

**(A) illegally manufactured controlled substances; and**

**(B) came to the notice of a law enforcement agency.**

**(2) Provided to each of the other parties to the transfer of the property a copy of the certificate of decontamination, if required by this rule.**

*(Solid Waste Management Board; 329 IAC 17-3-2)*

**329 IAC 17-3-3 Decontamination by a person not listed on the qualified inspector list prohibited**

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4

Affected: IC 13-14-1-15

**Sec. 3. (a) A person who is not listed by the department on the qualified inspector list shall not:**

- (1) supervise decontamination of a contaminated property;**
- (2) inspect a contaminated property;**
- (3) issue a certificate of decontamination; or**
- (4) advertise to decontaminate contaminated properties.**

**(b) A certificate of decontamination issued by a person who is not listed by the department on the qualified inspector list is not valid to certify decontamination of a contaminated property.** *(Solid Waste Management Board; 329 IAC 17-3-3)*

**329 IAC 17-3-4 Decontamination by the owner of the contaminated property prohibited**

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4

Affected: IC 13-14-1-15

**Sec. 4. The owner of the contaminated property shall not decontaminate or inspect property controlled by that person.** *(Solid Waste Management Board; 329 IAC 17-3-4)*

**329 IAC 17-3-5 Variances**

Authority: IC 13-14-1-15; IC 13-14-8; IC 13-14-9; IC 35-48-4

Affected: IC 13-14-1-15; IC 13-14-8-8

**Sec. 5. The owner of the contaminated property who believes that the imposition of this rule would impose an undue hardship or burden upon that person may apply to the commissioner for a variance from this rule under IC 13-14-8-8.** *(Solid Waste Management Board; 329 IAC 17-3-5)*

**Rule 4. Listing as a Qualified Inspector**

**329 IAC 17-4-1 Who must be listed as a qualified inspector**

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4

Affected: IC 13-14-1-15

**Sec. 1. (a) The person who performs any of the activities listed in section 5 of this rule must be listed on the qualified inspector list under this article.**

**(b) A person who:**

**(1) is not a supervisor; and**

**(2) decontaminates a contaminated property under the supervision of a person listed on the qualified inspector list;**

**is not required to be listed on the qualified inspector list but must have received the training for general site workers required by 29 CFR 1910.120(e), revised as of July 1, 2005. Beginning three hundred sixty-five (365) days following the effective date of this article, this training must include information on the hazards associated with illegal drug manufacturing operations in Indiana. (*Solid Waste Management Board; 329 IAC 17-4-1*)**

### **329 IAC 17-4-2 Criteria for listing**

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4

Affected: IC 13-14-1-15

**Sec. 2. (a) A person who applies to be listed as a qualified inspector must meet all of the criteria in this section.**

**(b) Beginning on the effective date of this article and ending 364 days following the effective date of this article, each person who applies to be listed as a qualified inspector shall have accumulated at least forty (40) hours of experience doing any of the following:**

**(1) Decontaminating contaminated properties under this article.**

**(2) Emergency response operations, cleanup operations, corrective actions, or operations involving hazardous wastes that are regulated under 29 CFR 1910.120, revised as of July 1, 2005.**

**(c) Beginning 365 days following the effective date of this article, each person who applies to be listed as a qualified inspector shall have accumulated at least forty (40) hours of experience decontaminating contaminated properties under the supervision of a qualified inspector.**

**(d) Each person who applies to be listed as a qualified inspector shall have received the training for supervisors required by 29 CFR 1910.120(e), revised as of July 1, 2005. Beginning 365 days following the effective date of this article, this training must include information on the hazards associated with illegal drug manufacturing operations in Indiana.**

**(e) Each person who applies to be listed as a qualified inspector shall have done all of the following:**

**(1) Received training on decontamination and inspection of contaminated property provided by the department.**

**(2) Passed an examination on the subject matter of the training provided by the department with a score of at least eighty percent (80%).**

**(f) To remain on the qualified inspector list, each qualified inspector shall receive all of the following refresher training:**

**(1) Eight (8) hour annual refresher training that meets the requirements of 29 CFR 1910.120(e)(8), revised as of July 1, 2005.**

**(2) Biennial refresher training provided by the department.**

**(g) Each qualified inspector shall maintain the following insurance:**

**(1) Professional liability insurance in the amount of at least one million dollars (\$1,000,000).**

**(2) Errors and omissions insurance in the amount of at least one million dollars (\$1,000,000) per occurrence.**

**(h) A person who decontaminates property under this article shall maintain pollution prevention insurance in the amount of at least three million dollars (\$3,000,000).** *(Solid Waste Management Board; 329 IAC 17-4-2)*

**329 IAC 17-4-3 Application for to be listed on the qualified inspector list**

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4

Affected: IC 13-14-1-15

**Sec. 3. (a) A person who wishes to be listed on the qualified inspector list must apply to the department in writing. The application may be in any form but must include all of the following information:**

**(1) Full name, address, telephone and electronic mail contact information.**

**(2) Copies of documents showing the applicant meets all applicable criteria in this rule.**

**(3) Complete information showing how the person should be described on the qualified inspector list.**

**(b) Mail or deliver the application to:**

**Indiana Department of Environmental Management**

**Office of Land Quality, Remediation Branch**

**Room 1101**

**100 North Senate Avenue**

**Indianapolis, Indiana 46204-2251.**

*(Solid Waste Management Board; 329 IAC 17-4-3)*

**329 IAC 17-4-4 Qualified inspector list**

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4

Affected: IC 13-14-1-15

**Sec. 4. (a) The department will maintain a current list of all persons who have been found by the department to meet the requirements of this article.**

**(b) The purpose of the qualified inspector list is to allow owners of contaminated properties, local health officers, and other persons to:**

**(1) locate qualified inspectors; and**

**(2) verify that a person is qualified to inspect and clean contaminated properties.**

**(c) Listing a person on the qualified inspector list does not convey a property right.**

**(d) The qualified inspector list will be available to the public as follows:**

**(1) In person or by mail at Indiana Department of Environmental Management, Office of Land Quality, Remediation Services Branch, Room 1101, 100 North Senate Avenue, Indianapolis, Indiana 46204-2251.**

**(2) By telephone at (317) 232-4535 or toll-free at (800) 451-6027 in Indiana.**

**(3) Electronically on the department's web site at <http://www.in.gov/idem>.**

**(e) The department will review each application for completeness. When the person or persons identified in the application have demonstrated that all criteria of this rule have been met, the department will place that person or persons on the qualified inspector list.**

**(f) The department will remove a person from the qualified inspector list who submits a written request for removal from the list to the address in section 3(b) of this rule.**

**(g) The department may remove a person from the qualified inspector list if the person demonstrates a failure to meet the requirements of this article.**

**(h) The department may return a person to the qualified inspector list when the condition that caused the department to remove that person from the list has been corrected. (*Solid Waste Management Board; 329 IAC 17-4-4*)**

### **329 IAC 17-4-5 Duties of a qualified inspector**

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4

Affected: IC 13-14-1-15

#### **Sec. 5. A qualified inspector shall do all of the following:**

**(1) Conduct an assessment of the contaminated property to:**

**(A) determine the types and levels of contamination present, including contamination in the septic system or sewage disposal system; and**

**(B) determine the scope and extent of the decontamination, if any, that will be required to achieve the final decontamination levels listed in 329 IAC 17-4-6, Table 1.**

**(2) Notify the local health officer that decontamination will be conducted at that location.**

**(3) Supervise decontamination of the property, including the septic system and sewage disposal system.**

**(4) Notify the person who pumps out the septic system that the property was used for illegal manufacture of a controlled substance, including a warning about the hazards that may be expected when cleaning the septic system.**

**(5) When decontamination is complete, inspect the contaminated property in accordance with section 6 of this rule.**

**(4) Certify in accordance with section 7 of this rule that:**

**(A) the property has been decontaminated; and**

**(B) the levels of chemicals used in the illegal manufacture of a controlled substance that were found at the property are below the decontamination levels listed in Table 1 or determined under section 6(b) of this rule.**

**(6) Comply with 29 CFR 1910.120, revised as of July 1, 2005, during all**

decontamination operations.

(7) Dispose or arrange for disposal of wastes resulting from decontamination in accordance with the following:

(A) 329 IAC 3.1 for wastes that are hazardous wastes as defined in 40 CFR 261, as incorporated by reference in 329 IAC 3.1-6-1.

(B) 327 IAC 7.1 for wastewater from a septic system.

(C) 329 IAC 10 for all other wastes resulting from decontamination.

*(Solid Waste Management Board; 329 IAC 17-4-5)*

### **329 IAC 17-4-6 Inspection of contaminated property**

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 35-48-4

Affected: IC 13-14-1-15

**Sec. 6. (a) Following decontamination if required, the qualified inspector shall inspect the contaminated property for the chemicals listed in Table 1 as described in this section.**

**(b) The qualified inspector shall determine which contaminants listed in Table 1 to test for by consultation with the law enforcement agency responsible for the discovery of the contaminated property and the local health officer.**

**(c) The qualified inspector shall use the sampling procedures described in “Guidance and Standards for Cleanup of Illegal Drug-Manufacturing Sites,” section 4 and appendices C through F, prepared for the Alaska Department of Environmental Conservation by Ecology and Environment, Inc., revised November 22, 2004, available from IDEM Office of Land Quality, 100 North Senate Avenue, Indianapolis, Indiana 46204-2241 or on-line at [http://www.dec.state.ak.us/spar/perp/docs/druglab\\_guidance.pdf](http://www.dec.state.ak.us/spar/perp/docs/druglab_guidance.pdf), as follows:**

**(1) The term “property owner” means the qualified inspector wherever it occurs.**

**(2) The term “ADEC” means the department wherever it occurs.**

**(3) References to “laboratory-specific methods” mean the analytical methods specified in Table 1.**

**(4) References to “qualified environmental sampler” or “qualified sampler” mean the qualified inspector.**

**(5) Delete the first three (3) paragraphs of section 4.**

**(6) Delete the first paragraph of subsection 4.1.**

**(7) Delete subsection 4.3.2 PID/FID VOC Survey.**

**(8) All sampling must be coordinated with the laboratory used for analysis.**

**(9) The wipe-sampling protocols in appendix C may be used for any controlled substance.**

**(10) In Table 4-3, convert the total sample sizes as follows:**

**(A) Delete “200 cm<sup>2</sup>” and insert “2 ft<sup>2</sup>” wherever it occurs.**

**(B) Delete “300 cm<sup>2</sup>” and insert “3 ft<sup>2</sup>” wherever it occurs.**

**(C) Delete “400 cm<sup>2</sup>” and insert “4 ft<sup>2</sup>” wherever it occurs.**

**(11) Delete Table 4-4.**

**(c) Analyze for the contaminants listed in Table 1 using Method 8270C from “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods”, U.S. Environmental**



Protection Agency Publication SW-846, Third Edition (November 1986), as amended by Updates I, II, IIA, IIB, III, IIIA, and IIIB (SW-846), available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238 or an equivalent method acceptable to the department.

(d) Determine if the levels of chemicals listed in Table 1 are equal to or lower than the decontamination levels in Table 1.

Table 1.

Chemical	Final Decontamination Level
Methamphetamine	1.0 µg/ft <sup>2</sup>
Ephedrine	1.0 µg/ft <sup>2</sup>
Pseudoephedrine	1.0 µg/ft <sup>2</sup>
Lysergic acid diethylamide (LSD)	1.0 µg/ft <sup>2</sup>
3,4-methylenedioxy-methamphetamine (MDMA) (Ecstasy)	1.0 µg/ft <sup>2</sup>
Phencyclidine (PCP)	1.0 µg/ft <sup>2</sup>
Gamma hydroxybutyrate (GHB)	1.0 µg/ft <sup>2</sup>

(e) All sample analysis must be conducted by an independent laboratory. (*Solid Waste Management Board; 329 IAC 17-4-6*)

### 329 IAC 17-4-7 Certificate of decontamination

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9, IC 35-48-4.

Affected: IC 13-14-1-15

**Sec. 7. (a)** When the final decontamination levels listed in Table 1 have been met, the qualified inspector shall certify in writing that decontamination has been completed and all applicable final decontamination levels have been met. The certification must be on the form provided by the commissioner and must be signed by the qualified inspector.

**(b)** The qualified inspector shall provide the following:

**(1)** The original certificate of decontamination to the owner of the contaminated property.

**(2)** A copy of the certificate of decontamination to the local health officer.

(*Solid Waste Management Board; 329 IAC 17-4-7*)

### 329 IAC 17-4-8 Third party validation

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9, IC 35-48-4.

Affected: IC 13-14-1-15

**Sec. 8.** Nothing in this article may be construed to prohibit independent third party validation of any records and analytical data relevant to the contaminated property. (*Solid Waste Management Board; 329 IAC 17-4-8*)

**329 IAC 17-4-9 Record retention**

Authority: IC 13-14-1-15; IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9, IC 35-48-4.

Affected: IC 13-14-1-15

**Sec. 9. The person who signs the certificate of decontamination shall do one (1) of the following:**

**(1) Make the following records and documents relevant to decontaminations performed by that person available upon request to the owner of the contaminated property, the department, and the local health officer for a period of at least five (5) years after the certificate of decontamination has been issued:**

**(A) A copy of the certificate of decontamination.**

**(B) All data and reports received from the laboratory that analyzes the post-decontamination samples relevant to the property.**

**(C) Copies of relevant laboratory records described in section 4.6, Laboratory Records, of SW-846, Chapter One.**

**(2) Transfer the documents listed in subsection (1) to the owner of the contaminated property.**

**(3) Transfer the documents listed in subsection (1) to the local health officer.**

*(Solid Waste Management Board; 329 IAC 17-4-9)*



Mitchell E. Daniels, Jr.  
Governor

Thomas W. Easterly  
Commissioner

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## MEMORANDUM

TO: Charles E. Schalliol, Director  
Indiana Office of Management and Budget

FROM: Bruce Palin, Assistant Commissioner  
Office of Land Quality

DATE: February 16, 2006

SUBJECT: Revised Estimate of Economic Impact for New Rules at 329 IAC 17 Concerning the Inspection and Cleanup of Properties Contaminated by Chemicals Used in the Illegal Manufacture of a Controlled Substance; LSA Document # 05-182

The Department of Environmental Management (IDEM) is submitting this revised estimate of the economic impact of this rule for your analysis under IC 4-22-2-28, IC 4-3-22 and IC 13-14-9-6(3). This estimate supplements the information provided to you on January 9, 2006. The following information is provided for your analysis:

- 1) The fact sheet for the rule.
- 2) The revised draft rule as most recently prepared by IDEM.
- 3) IDEM's revised estimate of the economic impact of the rule.

IDEM has estimated that the economic impact of the new rules at 329 IAC 17 will be greater than five hundred thousand dollars (\$500,000) on the regulated entities.

The first public hearing to consider preliminary adoption of this rule is currently scheduled for March 21, 2006.

### **Digest of Proposed Rule**

Adds 329 IAC 17 to require persons who own, operate, or otherwise control property that has been contaminated by chemicals used in the illegal manufacture of a controlled substance to have that property decontaminated before reoccupying the property or transferring an interest in that property to another person, and to establish criteria and procedures for the Department of Environmental Management to use to maintain a list of persons who are qualified to inspect and clean contaminated properties as required by Public Law 192-2005.

### **Government Entities**

State: Administration of this rule will be incorporated into the existing hazardous waste program carried out by the existing hazardous waste program staff. This rule will result in no increase in the resource needs of state government over and above the resources already allocated in the organizational structure for the Office of Land Quality.

There are no unfunded mandates placed upon any state agency by this proposed rule.

Local: This rule will result in no increase in the resource needs of local government.

There are no unfunded mandates placed upon any political subdivision by this proposed rule.

### **Regulated Entities**

This rule could result in a maximum estimated cost to persons who own, operate, or otherwise control property that is contaminated by chemicals used in the illegal manufacture of a controlled substance of as much as \$2,530,000. This cost is balanced by an equal amount of revenue to contractors and certified persons who do the decontamination required by the rule.

### **The Public, Adjacent Property Owners, Occupants of Contaminated Property**

This rule would result in a number of benefits that cannot be quantified at this time. These benefits include reduction of adverse health effects to persons, including children, from occupying contaminated structures and increase in property value and marketability for surrounding properties.

### **Information Sources**

IDEM relied on information provided by the Indiana State Department of Health, the Indiana State Police, the Indiana Criminal Justice Institute, the Fort Wayne-Allen County Department of Health, the Hamilton County Health Department, the Boone County Solid Waste Management District, and EES Group, Inc.

Indiana Department of Environmental Management, Office of Land Quality.

If you have any questions concerning this proposed rule, please contact Steve Mojonier, Office of Land Quality, at 233-1655.

### **Attachments**

**New Rules at 329 IAC 17 Concerning the Inspection and Cleaning of Properties  
Contaminated by Chemicals Used in the Illegal Manufacture of a  
Controlled Substance  
LSA Document # 05-182**

**REVISED ANALYSIS OF ECONOMIC IMPACT**

**329 IAC 17-3-1:** Property owners would be required to decontaminate their contaminated property using a person certified to decontaminate under this article before reoccupying the property or transferring the property to another person. A person who transfers contaminated property would be required to disclose the previous existence of an illegal drug manufacturing operation at that property and provide a copy of the certificate of decontamination to the other party, prior to transferring their interest in that property.

(1) Dwellings and other real property in Indiana are being contaminated with chemicals used in the illegal manufacture of controlled substances. This contamination presents a serious health threat to children and adults who will occupy these dwellings.

(A) Cost to decontaminate a contaminated property: The potential fiscal impact of this rulemaking to owners or operators of contaminated properties cannot be accurately estimated at this time. The Indiana State Police estimates that they will be notified of approximately 1000 illegal drug manufacturing operations in 2005, and anticipate a similar number in 2006.

One cleanup contractor estimated a cost of up to \$15,000 per structure to properly decontaminate a structure contaminated with methamphetamine or another illegal controlled substance, with a median cost of about \$5,000. The proposed rule would allow a property owner to demolish the structure without decontamination, and it is unknown how many property owners would exercise that option. Based on this information, the potential cost to owners of contaminated properties could be as much as \$2,530,000 per year (revised estimate) if all contaminated properties were decontaminated. Note: Please see the revised information below.

It is not possible to determine how many property owners would elect to demolish the contaminated property without decontaminating it, and what the economic effect of exercising that alternative would be.

(B) Economic impact of adverse health effects of occupying a contaminated property: No studies of the health effects of living in a dwelling contaminated by methamphetamine or other illegal controlled were available during development of this rule. IDEM has no information on the economic benefits of decontaminating these dwellings, however it is intuitive that reducing or eliminating these contaminants in dwellings will produce tangible health and economic benefits to the adults and children who will occupy these structures by preventing adverse health effects from contact with illegal drugs and chemicals used to manufacture illegal drugs. However, it is not possible at this time to quantify the economic benefit of reducing exposure of occupants to low levels of methamphetamine or other illegal controlled substances.

(2) This contamination also results in reduced property value and marketability of the contaminated properties and surrounding properties. Approximately 1000 of these properties were reported to Indiana law enforcement agencies in 2005. No information is currently available on the effect on surrounding property values of reducing the number of structures that become abandoned or reduced in value by being used as illegal drug manufacturing operations. IDEM expects the requirement to properly decontaminate these contaminated properties to reduce the number of abandoned and unsafe properties and have a tangible positive economic impact on surrounding properties. However, it is not possible at this time to quantify the economic effect of reducing the number of

contaminated properties on surrounding properties.

(3) The economic impact of transferring property with undisclosed contamination resulting from the illegal manufacture of controlled substances cannot be estimated at this time.

**329 IAC 17-4:** A person who supervises decontamination of property used for illegal manufacture of controlled substances would be required to be certified by the Indiana Department of Environmental Management (IDEM), meet certain training requirements, and perform certain duties.

(1) The certified person would be required to assess the property to determine the types and amounts of contamination present, supervise decontamination of the property, inspect the property for remaining contaminants to ensure the contaminant levels are below the decontamination levels specified in the rule, and certify to the property owner in writing that decontamination is complete and the property met the decontamination levels at the time of the inspection. Based on the estimates in (1)(A) above, the revenue from these activities could be as high as \$5,000,000 if all contaminated properties were decontaminated by certified persons. That value would be reduced by the number of properties that would be demolished without decontamination, properties that remain vacant without decontamination, and properties that are not decontaminated for other reasons. Because of these uncertainties this benefit cannot be accurately quantified at this time.

(2) Persons who apply for certification under this rule would be required to attend training specific to decontamination of property contaminated by chemicals used in the illegal manufacture of controlled substances. This training would be provided by IDEM with assistance from ISDH and ISP. This training would be provided as often as required to meet demand and could be provided at different locations. The cost of this element cannot be accurately estimated at this time but is expected to be limited to salaries and travel expenses of supervisors who must obtain certification under this rulemaking. The number of persons who would apply for certification under this rulemaking is unknown at this time.

(3) There are currently no requirements or standards for certification of persons to inspect and clean property that has been contaminated by chemicals used in the illegal manufacture of controlled substances. This lack of standards may result in property owners being unable to ensure that their properties will be properly decontaminated, and potential lessees or purchasers being unable to assure themselves that a property is safe to occupy. Providing a pool of persons qualified to inspect and decontaminate these contaminated properties will result in proper decontamination and assurance to property owners, occupants and purchasers that the properties have been cleaned and are suitable for reuse. However, there is currently no methodology or information available to estimate the increased value of property that has been decontaminated in accordance with these proposed standards.

**Revised Information:** IDEM recently received information from the Indiana State Police that describes the types of properties used as clandestine drug laboratories. This data characterizes 383 clandestine laboratory seizures in Indiana that were reported to the El Paso Information Center (EPIC) during 2005. The data indicates that properties occupied by humans (family residences, apartments and condominiums, hotels and motels, and businesses) make up 48.6 percent of the total seizures. Vehicles made up 19.6 per cent of the seizures. These two types of properties are seen as requiring decontamination to the limits proposed in the rule before reoccupancy or reuse. Because the typical vehicle used as a clandestine drug laboratory is not valuable enough to justify the expense of decontamination, we estimate that no more than 10 percent of vehicles will be decontaminated,

or approximately 2 percent of the total seizures.

IDEM has revised the draft rule to require decontamination of only residential properties, businesses and vehicles, because they are or may be occupied by humans. This revised version of the rule will be submitted to the board on March 21, 2006.

Assuming the estimate of total annual seizures in Indiana remains 1,000 per year, we estimate that no more than 50.6 percent of the total contaminated properties, or 506 properties, would potentially be decontaminated under this rule. This would make the maximum potential annual cost of this rule to be \$2,530,000, assuming an average of \$5,000 per decontamination. As noted before, there is insufficient information available to accurately estimate the average cost of a decontamination under this rule, nor is there enough information available to accurately estimate how many total properties would be demolished instead of being decontaminated. The actual annual cost of this rule will be significantly less than this estimate. As noted before, the costs to property owners are also economic benefits to contractors and workers in Indiana who perform the decontamination services. There are no fees associated with this rule.

**Information Sources:** IDEM relied on information provided by the Indiana State Department of Health, the Indiana State Police (ISP), the El Paso Information Center (provided by ISP), the Indiana Criminal Justice Institute, the Fort Wayne-AlLEN County Department of Health, the Hamilton County Health Department, the Boone County Solid Waste Management District, and EES Group, Inc.

**Attachments:**

E-mail with attachment from Sgt. Lori Petro, Indiana State Police  
Analysis of EPIC data provided by the Indiana State Police